

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

C.R.No.3741 of 2015

Mohinder Singh (deceased through LRs)

....Petitioner

Versus

Surjit Singh

....Respondent

Date of Order: 02.4.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.S. Sidhu, Advocate for the petitioner.

Mr. G.S. Punia, Sr. Advocate with
Ms. Jagriti Kalia, Advocate for the respondent.

AMIT RAWAL, J (ORAL)

By way of filing present revision, the petitioner-LR of Mohinder Singh/judgment debtor-defendant, has challenged the impugned order dated 12.11.2014 passed by Civil Judge (Jr. Division), Ludhiana in execution application seeking implementation of the decree dated 09.11.1998 rendered in Civil suit No.17 of 1991 titled Surjit Singh and Ors. Vs. Harsharan Kaur and Ors.

The trial Court on the basis of evidence brought on record decreed the suit observing thus:

“In view of what has been discussed in issue no.1 and 2, I am of the considered view that the plaintiff is entitled to permanent injunction and mandatory injunction prayed for. Accordingly the suit of the plaintiff is decreed to the effect that the defendants are restrained from opening any door, window, ventilator or any apperture from khasra numbers or any construction thereupon in and out of khasra numbers 1295 and 1296 in and towards private rasta (Passage)

comprised in Khasra No.1300 and 1301 as detailed in head note of the plaint and further the defendants are directed to remove the two khals constructed in Khasra No.1300 and 1301. Decree sheet be prepared and file be consigned to the record room.”

Aforementioned decree has attained finality upto this Court. Respondent-plaintiff alleged that said Mohinder Singh (since deceased) being represented by his legal representative has violated the decree dated 09.11.1998 by opening a gate in Khasra No.1300. On the basis of evidence available and other material on record, the Executing Court, in the light of Order 21 Rule 32 CPC, allowed the application vide the impugned order while ordering attachment of the property of respondent-JD Jagjit Singh.

Learned counsel for the petitioner, on instructions from his client, submitted that the aforesaid decree pertains to khasra Nos.1295,1296, 1300 and 1301 whereas the gate was opened in 1345 and that on the basis of admission of the petitioner, property has been ordered to be attached. Since the gate was opened in Khasra No.1345 in terms of the decree, it is on that count that the execution application was moved. He submitted at bar that the said gate has already been removed so there is no violation as such.

Learned counsel for the respondent raised no objection qua such statement and submitted that the present revision may be disposed of in terms of the statement of learned counsel for the petitioner.

I have heard learned counsel for the parties and perused the case file. The facts aforesaid are not in controversy.

Since learned counsel for the petitioner has made a statement that the gate made in Khasra No.1345, which opens in khasra No.1300, has already been closed, I am of the view that there is no wilful disobedience or

violation of the judgment and decree dated 09.11.1998 as on today.

In view of aforesaid, the present revision is allowed. The impugned order is set aside and the property attached in pursuance of the impugned order is ordered to be released. If the said statement is found to be incorrect, the respondents shall be at liberty to revive the petition by moving appropriate application.

April 02, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No